

Pavneet Singh Uppal, SBN 016805
 Shayna H. Balch, SBN 024852
 FISHER & PHILLIPS LLP
 3200 N. Central Avenue, Suite 805
 Phoenix, Arizona 85012-2425
 Telephone: (602) 281-3400
 Fax: (602) 281-3401
 puppal@fisherphillips.com
 sbalch@fisherphillips.com

Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Cleopatria Martinez,

Plaintiff,

v.

Maricopa County Community College
 District; et al.,

Defendants.

No. CV 15-01759-PHX-NVW

**DEFENDANTS' RESPONSES AND
 OBJECTIONS TO PLAINTIFF'S
 STATEMENT OF MATERIAL
 FACTS IN SUPPORT OF
 PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and L.R. Civ. 56.1, Defendants Maricopa County Community College District, Rufus Glasper, Ph.D. and Debra Glasper (collectively "Defendants"), by and through their undersigned counsel, hereby submit their responses and objections to Plaintiff's Statement of Material Facts in Support of Plaintiff's Motion for Summary Judgment ("PSOF"). Defendants Responses and Objections to Plaintiff's Statement of Material Facts In Support of Plaintiff's Motion for Summary Judgment are set forth in bold italics following each numbered paragraph of PSOF. References to "PSOF ¶ ____" refer to the numbered paragraphs of Plaintiff's Statement of Material Facts In Support of Plaintiff's Motion for Summary Judgment at Doc. 72. References to "DSOF ¶ ____" refer to the numbered paragraphs of Defendants' Statement of Facts In Support of Defendants' Motion for Summary Judgment at Doc. 73.

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S
STATEMENT OF MATERIAL FACTS**

1
2
3 1. Martinez began her employment as a full-time mathematics professor with
4 MCCCDC in 1985, and has taught at MCCCDC's Phoenix College campus since 1995.
5 [Deposition of Dr. Cleopatria Martinez on August 16, 2016 ("Martinez Depo. Vol. I") at
6 17:19-19:13, attached hereto as Exhibit 1].

7 **Defendants do not dispute PSOF ¶ 1.**

8 2. MCCCDC is a political subdivision of the State of Arizona. [Plaintiff's
9 Verified Amended Complaint, ¶2; Defendants' Answer to Plaintiff's Verified Amended
10 Complaint at ¶2].

11 **Defendants do not dispute PSOF ¶ 2.**

12 3. On August 9, 2013, Glasper, who, at relevant times, was MCCCDC's
13 Chancellor, issued Martinez a notice, copied to MCCCDC's Governing Board, of
14 MCCCDC's intent to dismiss Martinez from her employment. [Deposition of Dr. Rufus
15 Glasper ("Glasper Depo.") at 6:21-7:5, 10:10-11:9 and Glasper Depo. Exhibit 3 (August
16 9, 2013 Notice of Dismissal and Statement of Charges) at page 1 of 4, attached hereto as
17 Exhibit 2].

18 **Defendants do not dispute that on August 9, 2013, MCCCDC Vice Chancellor**
19 **Glasper issued a notice to Plaintiff with the Re line "Intent to dismiss you from**
20 **employment." Copied on the notice was the MCCCDC Governing Board, Phoenix**
21 **College President Anna Solley and Vice Chancellor of Human Resources Jim**
22 **Bowers. [DSOF 20 (DSOF ¶ 27)].**

23 4. Glasper was MCCCDC's Chancellor from 2003 until the end of February
24 2016. [Glasper Depo. at 6:21-7:5, 65:11-24, attached hereto as Exhibit 2].

25 **Defendants do not dispute PSOF ¶ 4.**

26 5. In the notice, Glasper wrote that Interim Vice Chancellor of Human
27 Resources James Bower had reviewed the charges against Martinez, in consultation with
28 the MCCCDC Legal Office, and recommended to Glasper that there existed prima facie

1 cause for Martinez's dismissal. [Glasper Depo. at 10:10-11:9 and Glasper Depo. Exhibit
2 3 (August 9, 2013 Notice of Dismissal and Statement of Charges) at page 1 of 4,
3 attached hereto as Exhibit 2].

4 **Defendants do not dispute PSOF ¶5.**

5 6. Glasper further wrote that he concurred with Bower's recommendation.
6 [Id.].

7 **Defendants do not dispute PSOF ¶6.**

8 7. Included with the notice, was a "Statement of Charges," in which it was
9 alleged that Martinez had engaged in the following:

- 10 • Violation of Administrative Regulation 6.7.1 — 'Willful and
11 Intentional violation of any state or federal law, applicable
12 ordinance, MCCCCD Governing Board policy, or MCCCCD
13 administrative regulation that affects the employee's ability
14 to perform his or her job,' specifically:
 - 15 ○ Violation of MCCCCD's cash handling rules as
16 covered by MCCCCD Administrative Regulations 1.17.
- 17 • Violation of Residential Faculty Policy Manual 3.2.4 — 'A
18 Faculty member shall not have any financial interest in or
19 receive compensation from the sale of any unpublished
20 instructional materials required or suggested for a class that
21 the Faculty member teaches.'
- 22 • Violation of U.S. Copyright Law and fair use guidelines, and
23 MCCCCD Administrative Regulations 3.2.4 and 3.2.5
24 regarding copyright regulations:
 - 25 ○ 3.2.4 Employees are prohibited from copying
26 materials not specifically allowed by the (1) copyright
27 Law, (2) fair use guidelines, (3) Licenses or
28 contractual agreements, or (4) other permission.
 - 3.2.5 The Governing Board disapproves of
unauthorized duplication in any form. Employees who
willfully disregard this Board policy and/or the
aforementioned copyright guidelines do so at their
own risk and assume all liability for their actions.

- Violation of Administrative Regulation 6.7.3 — ‘Willful and intentional failure to perform job duties that have first been communicated to an employee and are within the employee’s scope of employment,’ specifically, repeated failure to follow instructions regarding printing/copying of unauthorized materials, failure to use only approved course materials, unauthorized copying and sale of course materials, failure to reimburse students for the materials you wrongfully charged them for, and failure to meet the deadline to provide copies of any reimbursement checks to students.

Brief Timeline:

- January 2010 — College Vice Presidents Ronnie Elliott, Paul DeRose and Cassandra Kakar; along with Maggie McConnell; Assistant General Counsel, reviewed the requirements of AR 3.2 with you at length.
- April 2, 2010 — Anna Solley, Phoenix College President, notified you that your copying privileges at the Phoenix College IKON Copy Center were suspended.
- Spring 2010 — An Administrative Evaluation was initiated based on Mr. Joe Sueyoshi’s complaint. By agreement, the Evaluation Team did not undertake its task until the fall semester. The findings and recommendations were submitted to Dr. Solley on November 17, 2010. The overall findings included:
 - Copyright and plagiarism: Dr. Martinez was notified in writing and in meetings of MCCCDC’s and Phoenix College’s concerns regarding her course materials violating copyright, fair use, and plagiarism laws.
 - Insubordination: Dr. Martinez failed to follow Dr. Solley’s and MCCCDC’s Legal Counsel’s directives - specifically, she repeatedly requested copies, copied and printed unauthorized materials.
- December 9, 2010 — Dr. Solley administered an Initial Corrective Action to you for insubordination and failure to follow instructions regarding printing or copying of unauthorized materials.
- August 21-23, 2012 — You told your MAT 091 and MAT

151 students not to buy the approved text that you listed on the syllabus. Instead, you made copies of a colleague's materials and sold them to your students for \$11 each.

- October 18, 2012 — A Second Corrective Action for insubordination and unauthorized copying and sale of course materials was administered to you by Dr. Solley. Included in the corrective action was the following directive: "Because you imposed charges on your students without authority to do so, you have the responsibility to reimburse the students from your own funds. You are hereby directed to do so by personal check, beginning immediately and continuing until all students who paid you are reimbursed."
- January 11, 2013 — Upon discovering that the students who bought your unauthorized course materials had yet to be reimbursed, Casandra Kakar directed you, via email, to provide her by January 18, 2013, with front and back copies of all cashed personal reimbursement checks to your students.
- January 18, 2013 — You failed to provide Dr. Kakar with copies of any reimbursement checks and neglected to contact her regarding the money you still owe the students.
- February 21, 2013 — A student turned in the MAT091 materials which you left in room B210. Timothy Bryan, Mathematics Faculty, has previously told you that you do not have permission to use his materials again.

[*Id.*].

Defendants do not dispute PSOF ¶7.

8. The allegations in the August 9, 2013 Statement of Charges are taken verbatim from a March 20, 2013 Pre-Disciplinary Conference, which included copies of the specific policies Martinez is alleged to have violated. [Martinez Depo. Vol. I at 47:2-17, Martinez Depo. Vol. I Exhibit 4 (March 20, 2013 Notice of Pre-Disciplinary Conference with attachments) at MCCCCD/Martinez02114- MCCCCD/ Martinez 02120, and a more legible copy of the March 20, 2013 Notice of Pre-Disciplinary Conference with attachments, is attached hereto as Exhibit 1].

1 **Defendants do not dispute that the allegations contained in the March 20,**
2 **2013 Notice of Pre-Disciplinary Conference were the same as the allegations**
3 **contained in the August 9, 2013 Statement of Charges issued to Plaintiff.**

4 9. At the time Glasper sent Martinez the notice of intent to dismiss,
5 Martinez's employment relationship with MCCCCD was governed by the 2012-2013
6 Residential Faculty Policies (the "RFP"), which indicates the rights of faculty members
7 with respect to various employment matters. [Glasper Depo. at 7:18-8:15, 13:15-14:3,
8 Glasper Depo. Errata Sheet at 14:3 and Glasper Depo. Exhibit 1 (2012-2013 RFP)
9 attached hereto as Exhibit 2; Deposition of Judy Castellanos ("Castellanos Depo.") at
10 14:8-11, attached hereto as Exhibit 3].

11 **Defendants do not dispute PSOF ¶ 9.**

12
13 10. The RFP was "ratified" by, among others, Glasper and the MCCCCD
14 Governing Board. [Glasper Depo. at 7:18-8:11 and Glasper Depo. Exhibit 1 (2012-2013
15 RFP) at -52-, attached hereto as Exhibit 2].

16 **Defendants do not dispute that the 2012-2013 and 2013-2014 RFP Manuals**
17 **that Plaintiff attached to her Separate Statement of Material Facts were ratified by**
18 **Glasper and the MCCCCD Governing Board. Defendants object to the remainder of**
19 **allegations contained in PSOF ¶ 10 to the extent it incorporates RFP Manuals for**
20 **additional years as they are irrelevant and inadmissible because they do not "make**
21 **the existence of any fact that is of consequence to the determination of the action**
22 **more probable or less probable than it would be without the evidence." FRE 401,**
23 **402; Fed. R. Civ. P. 56(c)(2).**

24
25
26 11. Both the 2012-2013 RFP and the 2013-2014 Residential Faculty Policies
27 (the "2013-2014 RFP") are relevant in this case. [Glasper Depo. 13:24-14:3, Glasper
28 Depo. Errata Sheet at 14:3, attached hereto as Exhibit 2].

Defendants do not dispute PSOF ¶ 11.

12. The 2013-2014 Residential Faculty Policies (the “2013-2014 RFP”) were approved by the Governing Board on September 24, 2013. [Gasper Depo. at 9:9-10:7 and Gasper Depo. Exhibit 2 (2013-2014 RFP) at MCCCCD/Martinez00252, MCCCCD/Martinez00310 and MCCCCD/Martinez00339, attached hereto as Exhibit 2].

Defendants do not dispute PSOF ¶ 12.

13. Pursuant to RFP §§ 1.2. and 3.18.3.4., “Appointive” status refers to the employment status of a faculty member attained at the beginning of his/her sixth consecutive year. [Gasper Depo. at 7:20-8:2, 16:4-7 and Gasper Depo. Exhibit 1 (2012-2013 RFP) at -4- and -26-, attached hereto as Exhibit 2].

Defendants do not dispute PSOF ¶ 13.

14. Appointive faculty members have continuous rights to employment. [Gasper Depo. at 16:11-15, attached hereto as Exhibit 2].

Defendants do not dispute PSOF ¶ 14.

15. At the time she received the notice of intent to dismiss, and at the time of her suspension, Martinez had appointive status. [Gasper Depo. at 51:6-12, attached hereto as Exhibit 2].

Defendants do not dispute PSOF ¶ 15.

16. Pursuant to RFP § 3.11.2.: “No faculty member shall be disciplined, reprimanded, suspended, or reduced in assignment or compensation without just cause.” [Gasper Depo. at 7:18-8:15, 17:21-18:1, 21:18-21 and Gasper Depo. Exhibit 1 (2012-2013 RFP) at -19-, attached hereto as Exhibit 2].

Defendants do not dispute that MCCCCD Residential Faculty Policy Manual

1 for 2012-2013 (Effective July 1, 2012) Policy 3.11.2 states “No faculty member shall
2 be disciplined, reprimanded, suspended, or reduced in assignment or compensation
3 without just cause.” [DSOF ¶¶1-2 (DSOF Exh. 1)].
4

5 17. RFP § 3.11.2. was renumbered in 2013-2014 RFP as §6.3.2. [Glasper
6 Depo. at 9:7-14, 43:10-18 and Glasper Depo. Exhibit 2 (2013-2014 RFP) at
7 MCCCCD/Martinez00304, attached hereto as Exhibit 2].

8 **Defendants do not dispute that 2012-2013 RFP § 3.11.2 was renumbered in**
9 **2013-2014 as §6.3.2.**
10

11 18. The term “disciplined” in this context includes terminations and
12 suspensions. [Glasper Depo. at 17:21-18:8, attached hereto as Exhibit 2].

13 **For purposes of summary judgment only, Defendants do not dispute PSOF ¶**
14 **18.**
15

16 19. Regarding *suspensions* of faculty members, RFP § 3.13.1. states, in
17 pertinent part: “Upon a written statement of charges formulated by the Chancellor,
18 charging a Faculty member of the MCCCCD, the Chancellor, or his/her designee, may
19 immediately suspend the Faculty member and give notice of the suspension...” [Glasper
20 Depo. at 7:18-8:15 and Glasper Depo. Exhibit 1 (2012-2013 RFP) at -20-, attached
21 hereto as Exhibit 2].

22 **Defendants object to PSOF ¶ 19 because it mischaracterizes and selectively**
23 **cites to MCCCCD’s Residential Faculty Policy Manual. RFP § 3.13 is titled**
24 **Suspension of a Faculty Member and the subsections of RFP § 3.13 need to be read**
25 **in conjunction one another. Notwithstanding the foregoing, Defendants do not**
26 **dispute that MCCCCD Residential Faculty Policy Manual for 2012-2013 (Effective**
27 **July 1, 2012) Policy 3.13 states as follows:**
28

3.13. Suspension of a Faculty Member

3.13.1.

Upon a written statement of charges formulated by the Chancellor, charging a Faculty member of the MCCCDC, the Chancellor, or his/her designee, may immediately suspend the Faculty member and give notice of suspension. At the option of the Faculty member, the MCCCDC Faculty Association President will be notified of this action.

3.13.2.

The notice of suspension shall be in writing and be served upon the Faculty member, personally or by U.S. (registered or certified) mail, addressed to the Faculty member at his/her place of residence as recorded in the MCCCDC records.

3.13.3.

Any Faculty member who has been suspended pursuant to this Section will normally be paid his/her regular salary during the period of suspension. A suspension without pay will occur only upon advice of General Counsel. If payment is to be withheld, the Vice Chancellor of Human Resources will first consult with and advise the member and, at the option of the Faculty member, the Faculty Association President regarding the rationale for that action.

[DSOF ¶¶1-2 (DSOF Exh. 1)].

20. Pursuant to RFP §3.13.3.:

Any Faculty member who has been suspended pursuant to this Section will normally be paid his/her regular salary during the period of suspension. A suspension without pay will occur only upon the advice of General Counsel. If payment is to be withheld, the Vice Chancellor of Human Resources will first consult and advise the member...

[Glasper Depo. at 7:18-8:15 and Glasper Depo. Exhibit 1 (2012-2013 RFP) at -20- thru -21-, attached hereto as Exhibit 2].

Defendants object to PSOF ¶ 19 because it mischaracterizes and selectively cites to MCCCDC's Residential Faculty Policy Manual. RFP § 3.13 is titled Suspension of a Faculty Member and the subsections of RFP § 3.13 need to be read

1 in conjunction one another. Notwithstanding the foregoing, Defendants do not
 2 dispute that MCCCCD Residential Faculty Policy Manual for 2012-2013 (Effective
 3 July 1, 2012) Policy 3.13 states as follows:

4
 5 **3.13. Suspension of a Faculty Member**

6 **3.13.1.**

7 Upon a written statement of charges formulated by the
 8 Chancellor, charging a Faulty member of the MCCCCD, the
 9 Chancellor, or his/her designee, may immediately suspend the
 10 Faculty member and give notice of suspension. At the option of
 the Faculty member, the MCCCCD Faculty Association
 President will be notified of this action.

11 **3.13.2.**

12 The notice of suspension shall be in writing and be served upon
 13 the Faculty member, personally or by U.S. (registered or
 14 certified) mail, addressed to the Faculty member at his/her
 place of residence as recorded in the MCCCCD records.

15 **3.13.3.**

16 Any Faculty member who has been suspended pursuant to this
 17 Section will normally be paid hi/s her regular salary during the
 18 period of suspension. A suspension without pay will occur only
 19 upon advice of General Counsel. If payment is to be withheld,
 20 the Vice Chancellor of Human Resources will first consult with
 21 and advise the member and, at the option of the Faculty
 member, the Faculty Association President regarding the
 rationale for that action.

22 **[DSOF ¶¶1-2 (DSOF Exh. 1)].**

23
 24 21. Section 3.13. was renumbered in the 2013-2014 RFP as §3.11. [Glasper
 25 Depo. at 7:18-8:15, 9:9-14, 24:8-10, Glasper Depo. Exhibit 1 (2012-2013 RFP) at -20-
 26 thru -21- and Glasper Depo. Exhibit 2 (2013-2014 RFP) at MCCCCD/Martinez00273,
 attached hereto as Exhibit 2].

27 **Defendants do not dispute PSOF ¶ 21.**
 28

1
2 22. Notably, this section does not allow the Vice-Chancellor of Human
3 Resources to overturn the Chancellor's decision, and a suspended employee has no right
4 to have the suspension reviewed by the Governing Board. [Glasper Depo. at 23:23-24:7,
5 26:2-27:1, 66:11-14, attached hereto as Exhibit 2; Castellanos Depo. at 27:3-16, 31:9-
6 32:5, attached hereto as Exhibit 3].

7 **Defendants do not dispute that MCCCCD's Vice Chancellor does not have the**
8 **unilateral authority to overturn the Chancellor's decision to suspend a faculty**
9 **member. Defendants further do not dispute that a suspended employee does not**
10 **have an entitlement to have their suspension reviewed by the Governing Board.**
11 **Nevertheless, as Chancellor Glasper testified under oath, if a faculty member "did**
12 **not agree with a suspension, then they could request that it go to the Vice**
13 **Chancellor and then to me and then to the Governing Board. But that doesn't**
14 **mean that a suspended employee has the right to a hearing before the Governing**
15 **Board. Rather, it is up to the Governing Board whether the Governing Board**
16 **wants to hear more about a suspension." Doc. 72-2, p. 35 (Glasper deposition**
17 **correction page at PSOF Exh. 2). In accordance with this practice, Plaintiff was**
18 **allowed to submit a nine page legal brief to the Governing Board through her**
19 **attorney arguing that her "fourteen-month suspension is the economic equivalent of**
20 **a dismissal." [DSOF ¶ 29]. Plaintiff also sent at least four letters to the Governing**
21 **Board asking "the board to intervene in [her] case to rescind the Chancellor's**
22 **suspension." [DSOF ¶ 30]. On March 25, 2014, Plaintiff and her counsel each**
23 **separately spoke before the Governing Board in open session and advanced the**
24 **argument that her suspension was improper and that "the chancellor's fourteen**
25 **month suspension of [Plaintiff] is the functional equivalent of termination from the**
26 **district." [DSOF ¶30]. Plaintiff also appeared before the Governing Board in**
27 **open session a second time on October 28, 2014 and argued against her suspension.**
28 **[DSOF ¶35]. Finally, Plaintiff had two other individuals separately appear before**

1 the Governing Board on her behalf and object to her suspension. [DSOF ¶35].

2

3 23. Regarding faculty member *dismissal*, RFP § 3.15. provides a detailed

4 procedure that includes, in pertinent part, the right of a faculty member to receive a

5 “written statement of charges” which sets forth “the statutes, policies, rules, or written

6 objectives of the College that the Faculty member is alleged to have violated” with “such

7 specificity that the Faculty member will be able to prepare a defense based on the

8 statement” (RFP §§ 3.15.1. and 3.15.2.); the right to request a hearing “which shall

9 suspend the dismissal procedure, pending the completion of the hearing.” (RFP §

10 3.15.3.); the right to have a Hearing Committee constituted to conduct a hearing

11 regarding the allegations against the faculty member (RFP § 3.15.4.); and the right to

12 attend the hearing, present testimony, evidence or statements, oral or written, in his/her

13 behalf, and be represented by legal counsel or other representative (RFP § 3.15.6.).

14 [Glasper Depo. at 7:18-8:2 and Glasper Depo. Exhibit 1 (2012-2013 RFP) at -21- thru -

15 23-, attached hereto as Exhibit 2; Castellanos Depo. at 17:11-18:22, attached hereto as

16 Exhibit 3].

17 **Defendants object to PSOF ¶ 23 because it mischaracterizes and selectively**

18 **cites to MCCCCD’s Residential Faculty Policy Manual. RFP § 3.15 is titled Faculty**

19 **Member Dismissal – Probationary and Appointive and the subsections of RFP §**

20 **3.15 need to be read in conjunction one another. Notwithstanding the foregoing,**

21 **Defendants do not dispute that MCCCCD Residential Faculty Policy Manual for**

22 **2012-2013 (Effective July 1, 2012) Policy 3.15 states as follows:**

23

24 **3.15. Faculty Member Dismissal-Probationary and Appointive**

25 **A Faculty member who is recommended, by the College President,**

26 **through the Chancellor, to the Governing Board, for dismissal shall**

27 **have access to the following due-process procedures.**

28 **3.15.1.**

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in consultation with the MCCCDC Legal Office, may recommend, to the Chancellor, that there exists prima facie cause for the dismissal of a Faculty member. The Chancellor shall inform the Governing Board in writing, with a copy of the recommendation being sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in the MCCCDC records. The Vice Chancellor's recommendation will give notice to the Chancellor, Governing Board, and the Faculty member of the intention to formally recommend dismissal, which shall not be sooner than thirty (30) days from the date of the letter, nor later than the end of the current academic year.

3.15.2.

A written statement of charges shall be provided to the Chancellor, Governing Board, and the Faculty member as an attachment to the notification outlined in the preceding paragraph. The statement of charges shall state, if applicable, the statutes, policies, rules, or written objectives of the College that the Faculty member is alleged to have violated. The statement of charges shall be of such specificity that the Faculty member will be able to prepare a defense based on the statement.

3.15.3.

The Faculty member shall have the right to a hearing by filing a written request with the Vice-Chancellor within five (5) business days after being served with a notice of intent to dismiss. The filing of a timely request shall suspend the dismissal procedure, pending the completion of the hearing.

3.15.4.

Upon request, a Hearing Committee shall be constituted within five (5) business days and shall be composed of three (3) Faculty members: one (1) appointed by the Chancellor, one (1) selected by the President of the Faculty Association, and one (1) selected by the member. All three (3) shall be Appointive Faculty. The committed member selected by the Chancellor and the President of the Faculty Association will be from colleges other than the college where the Faculty member recommended for

dismissal is assigned. The committee shall be considered constituted when the hearing committee and the Faculty member have been informed by the Faculty Association President of the committee's formation.

3.15.5.

The Hearing Committee shall select a Chair. Unless the parties stipulate to extend the time beyond that which is set forth below, the Chair shall conduct a meeting with the attorney representing the MCCCCD and the Faculty member and/or his/her attorney/representative no later than twenty (20) business days after the formation of the committee for the purpose of exchanging exhibits, witness lists, and summaries of witness testimony. The Chair may choose to deny admission of an exhibit(s) or witness testimony for failure to comply with this Section.

3.15.6.

Unless the parties otherwise agree, the Hearing Committee shall conduct the hearing no later than ten (10) business days after the exchange of information detailed in Section 3.15.5. Prior to the hearing, the Faculty member must declare, in writing, whether he/she wishes the hearing to be public or in executive session. The member may attend the hearing; present any testimony, evidence, or statements, oral or written, in his/her behalf; and be represented by legal counsel or other representative. It is expressly understood that the act of testifying will not be subject to reprisal by the MCCCCD.

3.15.7.

Within five (5) business days after completion of the hearing, the Hearing Committee shall provide the Chancellor, and the Faculty member with a summary of the evidence that was presented during the hearing. In addition, the Hearing Committee shall render binding written findings of fact and conclusions of law and forward these along with its recommendation regarding dismissal to the Chancellor. The above deadline may be extended up to fifteen (15) business days after completion of the hearing, if the Hearing Committee requests briefs and/or recommended findings of fact and conclusions of law from the parties.

3.15.8.

After receiving the Hearing Committee's summary of evidence, findings of fact, conclusions of law, and final recommendation in regard to dismissal, the Chancellor, may meet with the Hearing Committee to clarify any questions he/she may have. The Chancellor shall have ten (10) business days in which to review the recommendation regarding dismissal. The Chancellor may adopt the Hearing Committee's recommendation regarding dismissal or make his/her own recommendation and forward the recommendation along with the summary of the evidence, a copy of the findings of fact, conclusions of law, and final recommendations of the Hearing Committee to the Governing Board.

3.15.9.

The Governing Board will meet with the Faculty member and/or his/her representative and a representative of the administration to hear arguments regarding the Chancellor's and the Hearing Committee's recommendation regarding dismissal. This meeting will be an executive session unless the Faculty member chooses to have this meeting in public. The parties shall have no less than one-half hour to present their respective cases. The length of the meeting shall not exceed one (1) hour.

3.15.10.

The Governing Board, at a public meeting, shall render a final decision for retention or dismissal of the Faculty member. A copy of the final decision shall be sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in MCCCCD records. It is expressly understood that the Governing Board decision does not diminish the Faculty member's right to seek other legal remedies under local, state and federal law.

[DSOF ¶¶1-2 (DSOF Exh. 1)].

24. After completion of the hearing, the Hearing Committee provides the Chancellor and the faculty member with a summary of the evidence that was presented during the hearing, renders "binding written findings of fact and conclusions of law" and forwards them along with its recommendation regarding dismissal to the Chancellor. (RFP § 3.15.7.). [Glasper Depo. at 7:18-8:2, 28:6-12, 29:7-11, Glasper Depo. Exhibit 1

at -21- thru -23-, attached hereto as Exhibit 2; Castellanos Depo. at 17:11-18:22, 22:8-18, attached hereto as Exhibit 3].

Defendants object to PSOF ¶ 24 because it mischaracterizes and selectively cites to MCCCCD's Residential Faculty Policy Manual. RFP § 3.15 is titled Faculty Member Dismissal – Probationary and Appointive and the subsections of RFP § 3.15 need to be read in conjunction one another. Notwithstanding the foregoing, Defendants do not dispute that MCCCCD Residential Faculty Policy Manual for 2012-2013 (Effective July 1, 2012) Policy 3.15 states as follows:

3.15. Faculty Member Dismissal-Probationary and Appointive

A Faculty member who is recommended, by the College President, through the Chancellor, to the Governing Board, for dismissal shall have access to the following due-process procedures.

3.15.1.

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in consultation with the MCCCCD Legal Office, may recommend, to the Chancellor, that there exists prima facie cause for the dismissal of a Faculty member. The Chancellor shall inform the Governing Board in writing, with a copy of the recommendation being sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in the MCCCCD records. The Vice Chancellor's recommendation will give notice to the Chancellor, Governing Board, and the Faculty member of the intention to formally recommend dismissal, which shall not be sooner than thirty (30) days from the date of the letter, nor later than the end of the current academic year.

3.15.2.

A written statement of charges shall be provided to the Chancellor, Governing Board, and the Faculty member as an attachment to the notification outlined in the preceding paragraph. The statement of charges shall state, if applicable, the statutes, policies, rules, or written objectives of the College

1 that the Faculty member is alleged to have violated. The
2 statement of charges shall be of such specificity that the Faculty
3 member will be able to prepare a defense based on the
4 statement.

5 **3.15.3.**

6 The Faculty member shall have the right to a hearing by filing a
7 written request with the Vice-Chancellor within five (5)
8 business days after being served with a notice of intent to
9 dismiss. The filing of a timely request shall suspend the
10 dismissal procedure, pending the completion of the hearing.

11 **3.15.4.**

12 Upon request, a Hearing Committee shall be constituted within
13 five (5) business days and shall be composed of three (3) Faculty
14 members: one (1) appointed by the Chancellor, one (1) selected
15 by the President of the Faculty Association, and one (1) selected
16 by the member. All three (3) shall be Appointive Faculty. The
17 committed member selected by the Chancellor and the
18 President of the Faculty Association will be from colleges other
19 than the college where the Faculty member recommended for
20 dismissal is assigned. The committee shall be considered
21 constituted when the hearing committee and the Faculty
22 member have been informed by the Faculty Association
23 President of the committee's formation.

24 **3.15.5.**

25 The Hearing Committee shall select a Chair. Unless the parties
26 stipulate to extend the time beyond that which is set forth
27 below, the Chair shall conduct a meeting with the attorney
28 representing the MCCCD and the Faculty member and/or
his/her attorney/representative no later than twenty (20)
business days after the formation of the committee for the
purpose of exchanging exhibits, witness lists, and summaries of
witness testimony. The Chair may choose to deny admission of
an exhibit(s) or witness testimony for failure to comply with this
Section.

3.15.6.

Unless the parties otherwise agree, the Hearing Committee shall
conduct the hearing no later than ten (10) business days after
the exchange of information detailed in Section 3.15.5. Prior to

1 the hearing, the Faculty member must declare, in writing,
2 whether he/she wishes the hearing to be public or in executive
3 session. The member may attend the hearing; present any
4 testimony, evidence, or statements, oral or written, in his/her
5 behalf; and be represented by legal counsel or other
6 representative. It is expressly understood that the act of
7 testifying will not be subject to reprisal by the MCCCCD.

8 **3.15.7.**

9 Within five (5) business days after completion of the hearing,
10 the Hearing Committee shall provide the Chancellor, and the
11 Faculty member with a summary of the evidence that was
12 presented during the hearing. In addition, the Hearing
13 Committee shall render binding written findings of fact and
14 conclusions of law and forward these along with its
15 recommendation regarding dismissal to the Chancellor. The
16 above deadline may be extended up to fifteen (15) business days
17 after completion of the hearing, if the Hearing Committee
18 requests briefs and/or recommended findings of fact and
19 conclusions of law from the parties.

20 **3.15.8.**

21 After receiving the Hearing Committee's summary of evidence,
22 findings of fact, conclusions of law, and final recommendation
23 in regard to dismissal, the Chancellor, may meet with the
24 Hearing Committee to clarify any questions he/she may have.
25 The Chancellor shall have ten (10) business days in which to
26 review the recommendation regarding dismissal. The
27 Chancellor may adopt the Hearing Committee's
28 recommendation regarding dismissal or make his/her own
recommendation and forward the recommendation along with
the summary of the evidence, a copy of the findings of fact,
conclusions of law, and final recommendations of the Hearing
Committee to the Governing Board.

3.15.9.

The Governing Board will meet with the Faculty member
and/or his/her representative and a representative of the
administration to hear arguments regarding the Chancellor's
and the Hearing Committee's recommendation regarding
dismissal. This meeting will be an executive session unless the
Faculty member chooses to have this meeting in public. The
parties shall have no less than one-half hour to present their

1 respective cases. The length of the meeting shall not exceed one
2 (1) hour.

3 **3.15.10.**

4 The Governing Board, at a public meeting, shall render a final
5 decision for retention or dismissal of the Faculty member. A
6 copy of the final decision shall be sent (U.S. certified or
7 registered mail) to the Faculty member at his/her place of
8 residence as recorded in MCCCCD records. It is expressly
9 understood that the Governing Board decision does not
10 diminish the Faculty member's right to seek other legal
11 remedies under local, state and federal law.

12 [DSOF ¶¶1-2 (DSOF Exh. 1)].

13 25. The Chancellor may meet with the Hearing Committee to clarify any
14 questions he/she may have; and may then adopt the Hearing Committee's
15 recommendation regarding dismissal or make his/her own recommendation and forward
16 the recommendation along with the summary of the evidence, a copy of the findings of
17 fact, conclusions of law, and final recommendation of the Hearing Committee to the
18 Governing Board. [Glasper Depo. at 7:18-8:2, 33:18-34:9 and Glasper Depo. Exhibit 1
19 (2012-2013 RFP) at -21- thru -23-, attached hereto as Exhibit 2; Castellanos Depo. at
20 17:11-18:22, attached hereto as Exhibit 3].

21 Defendants object to PSOF ¶ 23 because it mischaracterizes and selectively
22 cites to MCCCCD's Residential Faculty Policy Manual. RFP § 3.15 is titled Faculty
23 Member Dismissal – Probationary and Appointive and the subsections of RFP §
24 3.15 need to be read in conjunction one another. Notwithstanding the foregoing,
25 Defendants do not dispute that MCCCCD Residential Faculty Policy Manual for
26 2012-2013 (Effective July 1, 2012) Policy 3.15 states as follows:

27 **3.15. Faculty Member Dismissal-Probationary and Appointive**

28 A Faculty member who is recommended, by the College President,
 through the Chancellor, to the Governing Board, for dismissal shall
 have access to the following due-process procedures.

3.15.1.

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in consultation with the MCCCCD Legal Office, may recommend, to the Chancellor, that there exists prima facie cause for the dismissal of a Faculty member. The Chancellor shall inform the Governing Board in writing, with a copy of the recommendation being sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in the MCCCCD records. The Vice Chancellor's recommendation will give notice to the Chancellor, Governing Board, and the Faculty member of the intention to formally recommend dismissal, which shall not be sooner than thirty (30) days from the date of the letter, nor later than the end of the current academic year.

3.15.2.

A written statement of charges shall be provided to the Chancellor, Governing Board, and the Faculty member as an attachment to the notification outlined in the preceding paragraph. The statement of charges shall state, if applicable, the statutes, policies, rules, or written objectives of the College that the Faculty member is alleged to have violated. The statement of charges shall be of such specificity that the Faculty member will be able to prepare a defense based on the statement.

3.15.3.

The Faculty member shall have the right to a hearing by filing a written request with the Vice-Chancellor within five (5) business days after being served with a notice of intent to dismiss. The filing of a timely request shall suspend the dismissal procedure, pending the completion of the hearing.

3.15.4.

Upon request, a Hearing Committee shall be constituted within five (5) business days and shall be composed of three (3) Faculty members: one (1) appointed by the Chancellor, one (1) selected by the President of the Faculty Association, and one (1) selected by the member. All three (3) shall be Appointive Faculty. The committed member selected by the Chancellor and the

1 President of the Faculty Association will be from colleges other
2 than the college where the Faculty member recommended for
3 dismissal is assigned. The committee shall be considered
4 constituted when the hearing committee and the Faculty
5 member have been informed by the Faculty Association
6 President of the committee's formation.

7 **3.15.5.**

8 The Hearing Committee shall select a Chair. Unless the parties
9 stipulate to extend the time beyond that which is set forth
10 below, the Chair shall conduct a meeting with the attorney
11 representing the MCCCCD and the Faculty member and/or
12 his/her attorney/representative no later than twenty (20)
13 business days after the formation of the committee for the
14 purpose of exchanging exhibits, witness lists, and summaries of
15 witness testimony. The Chair may choose to deny admission of
16 an exhibit(s) or witness testimony for failure to comply with this
17 Section.

18 **3.15.6.**

19 Unless the parties otherwise agree, the Hearing Committee shall
20 conduct the hearing no later than ten (10) business days after
21 the exchange of information detailed in Section 3.15.5. Prior to
22 the hearing, the Faculty member must declare, in writing,
23 whether he/she wishes the hearing to be public or in executive
24 session. The member may attend the hearing; present any
25 testimony, evidence, or statements, oral or written, in his/her
26 behalf; and be represented by legal counsel or other
27 representative. It is expressly understood that the act of
28 testifying will not be subject to reprisal by the MCCCCD.

3.15.7.

Within five (5) business days after completion of the hearing,
the Hearing Committee shall provide the Chancellor, and the
Faculty member with a summary of the evidence that was
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Committee shall render binding written findings of fact and
conclusions of law and forward these along with its
recommendation regarding dismissal to the Chancellor. The
above deadline may be extended up to fifteen (15) business days
after completion of the hearing, if the Hearing Committee
requests briefs and/or recommended findings of fact and
conclusions of law from the parties.

3.15.8.

After receiving the Hearing Committee's summary of evidence, findings of fact, conclusions of law, and final recommendation in regard to dismissal, the Chancellor, may meet with the Hearing Committee to clarify any questions he/she may have. The Chancellor shall have ten (10) business days in which to review the recommendation regarding dismissal. The Chancellor may adopt the Hearing Committee's recommendation regarding dismissal or make his/her own recommendation and forward the recommendation along with the summary of the evidence, a copy of the findings of fact, conclusions of law, and final recommendations of the Hearing Committee to the Governing Board.

3.15.9.

The Governing Board will meet with the Faculty member and/or his/her representative and a representative of the administration to hear arguments regarding the Chancellor's and the Hearing Committee's recommendation regarding dismissal. This meeting will be an executive session unless the Faculty member chooses to have this meeting in public. The parties shall have no less than one-half hour to present their respective cases. The length of the meeting shall not exceed one (1) hour.

3.15.10.

The Governing Board, at a public meeting, shall render a final decision for retention or dismissal of the Faculty member. A copy of the final decision shall be sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in MCCCCD records. It is expressly understood that the Governing Board decision does not diminish the Faculty member's right to seek other legal remedies under local, state and federal law.

[DSOF ¶¶1-2 (DSOF Exh. 1)].

26. The Governing Board will meet with the Faculty member and/or his/her representative and a representative of the administration to hear arguments regarding the Chancellor's and the Hearing Committee's recommendation regarding dismissal.

[Glasper Depo. at 7:18-8:2, 33:18-34:9 and Glasper Depo. Exhibit 1 (2012-2013 RFP) at -21- thru -23-, attached hereto as Exhibit 2; Castellanos Depo. at 17:11-18:22, attached hereto as Exhibit 3].

Defendants object to PSOF ¶ 23 because it mischaracterizes and selectively cites to MCCCCD's Residential Faculty Policy Manual. RFP § 3.15 is titled Faculty Member Dismissal – Probationary and Appointive and the subsections of RFP § 3.15 need to be read in conjunction one another. Notwithstanding the foregoing, Defendants do not dispute that MCCCCD Residential Faculty Policy Manual for 2012-2013 (Effective July 1, 2012) Policy 3.15 states as follows:

3.15. Faculty Member Dismissal-Probationary and Appointive

A Faculty member who is recommended, by the College President, through the Chancellor, to the Governing Board, for dismissal shall have access to the following due-process procedures.

3.15.1.

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in consultation with the MCCCCD Legal Office, may recommend, to the Chancellor, that there exists prima facie cause for the dismissal of a Faculty member. The Chancellor shall inform the Governing Board in writing, with a copy of the recommendation being sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in the MCCCCD records. The Vice Chancellor's recommendation will give notice to the Chancellor, Governing Board, and the Faculty member of the intention to formally recommend dismissal, which shall not be sooner than thirty (30) days from the date of the letter, nor later than the end of the current academic year.

3.15.2.

A written statement of charges shall be provided to the Chancellor, Governing Board, and the Faculty member as an attachment to the notification outlined in the preceding

1 paragraph. The statement of charges shall state, if applicable,
2 the statutes, policies, rules, or written objectives of the College
3 that the Faculty member is alleged to have violated. The
4 statement of charges shall be of such specificity that the Faculty
member will be able to prepare a defense based on the
statement.

5 **3.15.3.**

6 The Faculty member shall have the right to a hearing by filing a
7 written request with the Vice-Chancellor within five (5)
8 business days after being served with a notice of intent to
dismiss. The filing of a timely request shall suspend the
9 dismissal procedure, pending the completion of the hearing.

10 **3.15.4.**

11 Upon request, a Hearing Committee shall be constituted within
12 five (5) business days and shall be composed of three (3) Faculty
13 members: one (1) appointed by the Chancellor, one (1) selected
14 by the President of the Faculty Association, and one (1) selected
15 by the member. All three (3) shall be Appointive Faculty. The
16 committed member selected by the Chancellor and the
17 President of the Faculty Association will be from colleges other
18 than the college where the Faculty member recommended for
dismissal is assigned. The committee shall be considered
constituted when the hearing committee and the Faculty
member have been informed by the Faculty Association
President of the committee's formation.

19 **3.15.5.**

20 The Hearing Committee shall select a Chair. Unless the parties
21 stipulate to extend the time beyond that which is set forth
22 below, the Chair shall conduct a meeting with the attorney
23 representing the MCCCCD and the Faculty member and/or
24 his/her attorney/representative no later than twenty (20)
25 business days after the formation of the committee for the
26 purpose of exchanging exhibits, witness lists, and summaries of
27 witness testimony. The Chair may choose to deny admission of
28 an exhibit(s) or witness testimony for failure to comply with this
Section.

3.15.6.

1 Unless the parties otherwise agree, the Hearing Committee shall
2 conduct the hearing no later than ten (10) business days after
3 the exchange of information detailed in Section 3.15.5. Prior to
4 the hearing, the Faculty member must declare, in writing,
5 whether he/she wishes the hearing to be public or in executive
6 session. The member may attend the hearing; present any
7 testimony, evidence, or statements, oral or written, in his/her
8 behalf; and be represented by legal counsel or other
9 representative. It is expressly understood that the act of
10 testifying will not be subject to reprisal by the MCCCDC.

11 **3.15.7.**

12 Within five (5) business days after completion of the hearing,
13 the Hearing Committee shall provide the Chancellor, and the
14 Faculty member with a summary of the evidence that was
15 presented during the hearing. In addition, the Hearing
16 Committee shall render binding written findings of fact and
17 conclusions of law and forward these along with its
18 recommendation regarding dismissal to the Chancellor. The
19 above deadline may be extended up to fifteen (15) business days
20 after completion of the hearing, if the Hearing Committee
21 requests briefs and/or recommended findings of fact and
22 conclusions of law from the parties.

23 **3.15.8.**

24 After receiving the Hearing Committee's summary of evidence,
25 findings of fact, conclusions of law, and final recommendation
26 in regard to dismissal, the Chancellor, may meet with the
27 Hearing Committee to clarify any questions he/she may have.
28 The Chancellor shall have ten (10) business days in which to
review the recommendation regarding dismissal. The
Chancellor may adopt the Hearing Committee's
recommendation regarding dismissal or make his/her own
recommendation and forward the recommendation along with
the summary of the evidence, a copy of the findings of fact,
conclusions of law, and final recommendations of the Hearing
Committee to the Governing Board.

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The Governing Board will meet with the Faculty member
and/or his/her representative and a representative of the
administration to hear arguments regarding the Chancellor's
and the Hearing Committee's recommendation regarding

dismissal. This meeting will be an executive session unless the Faculty member chooses to have this meeting in public. The parties shall have no less than one-half hour to present their respective cases. The length of the meeting shall not exceed one (1) hour.

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The Governing Board, at a public meeting, shall render a final decision for retention or dismissal of the Faculty member. A copy of the final decision shall be sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in MCCCCD records. It is expressly understood that the Governing Board decision does not diminish the Faculty member's right to seek other legal remedies under local, state and federal law.

[DSOF ¶¶1-2 (DSOF Exh. 1)].

27. The parties are to have no less than one-half hour to present their respective cases. (RFP § 3.15.9.). [Glasper Depo. at 7:18-8:2 and Glasper Depo. Exhibit 1 (2012-2013 RFP) at -23-, attached hereto as Exhibit 2].

Defendants object to PSOF ¶ 23 because it mischaracterizes and selectively cites to MCCCCD's Residential Faculty Policy Manual. RFP § 3.15 is titled Faculty Member Dismissal – Probationary and Appointive and the subsections of RFP § 3.15 need to be read in conjunction one another. Notwithstanding the foregoing, Defendants do not dispute that MCCCCD Residential Faculty Policy Manual for 2012-2013 (Effective July 1, 2012) Policy 3.152 states as follows:

3.15. Faculty Member Dismissal-Probationary and Appointive

A Faculty member who is recommended, by the College President, through the Chancellor, to the Governing Board, for dismissal shall have access to the following due-process procedures.

3.15.1.

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in

1 consultation with the MCCCCD Legal Office, may recommend,
2 to the Chancellor, that there exists prima facie cause for the
3 dismissal of a Faculty member. The Chancellor shall inform the
4 Governing Board in writing, with a copy of the
5 recommendation being sent (U.S. certified or registered mail) to
6 the Faculty member at his/her place of residence as recorded in
7 the MCCCCD records. The Vice Chancellor's recommendation
8 will give notice to the Chancellor, Governing Board, and the
9 Faculty member of the intention to formally recommend
10 dismissal, which shall not be sooner than thirty (30) days from
11 the date of the letter, nor later than the end of the current
12 academic year.

13 **3.15.2.**

14 A written statement of charges shall be provided to the
15 Chancellor, Governing Board, and the Faculty member as an
16 attachment to the notification outlined in the preceding
17 paragraph. The statement of charges shall state, if applicable,
18 the statutes, policies, rules, or written objectives of the College
19 that the Faculty member is alleged to have violated. The
20 statement of charges shall be of such specificity that the Faculty
21 member will be able to prepare a defense based on the
22 statement.

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24 The Faculty member shall have the right to a hearing by filing a
25 written request with the Vice-Chancellor within five (5)
26 business days after being served with a notice of intent to
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28 dismissal procedure, pending the completion of the hearing.

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by the member. All three (3) shall be Appointive Faculty. The
committed member selected by the Chancellor and the
President of the Faculty Association will be from colleges other
than the college where the Faculty member recommended for
dismissal is assigned. The committee shall be considered
constituted when the hearing committee and the Faculty

1 member have been informed by the Faculty Association
2 President of the committee's formation.

3 **3.15.5.**

4 The Hearing Committee shall select a Chair. Unless the parties
5 stipulate to extend the time beyond that which is set forth
6 below, the Chair shall conduct a meeting with the attorney
7 representing the MCCCCD and the Faculty member and/or
8 his/her attorney/representative no later than twenty (20)
9 business days after the formation of the committee for the
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12 an exhibit(s) or witness testimony for failure to comply with this
13 Section.

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16 conduct the hearing no later than ten (10) business days after
17 the exchange of information detailed in Section 3.15.5. Prior to
18 the hearing, the Faculty member must declare, in writing,
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20 session. The member may attend the hearing; present any
21 testimony, evidence, or statements, oral or written, in his/her
22 behalf; and be represented by legal counsel or other
23 representative. It is expressly understood that the act of
24 testifying will not be subject to reprisal by the MCCCCD.

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26 Within five (5) business days after completion of the hearing,
27 the Hearing Committee shall provide the Chancellor, and the
28 Faculty member with a summary of the evidence that was
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Committee shall render binding written findings of fact and
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recommendation regarding dismissal to the Chancellor. The
above deadline may be extended up to fifteen (15) business days
after completion of the hearing, if the Hearing Committee
requests briefs and/or recommended findings of fact and
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After receiving the Hearing Committee's summary of evidence, findings of fact, conclusions of law, and final recommendation in regard to dismissal, the Chancellor, may meet with the Hearing Committee to clarify any questions he/she may have. The Chancellor shall have ten (10) business days in which to review the recommendation regarding dismissal. The Chancellor may adopt the Hearing Committee's recommendation regarding dismissal or make his/her own recommendation and forward the recommendation along with the summary of the evidence, a copy of the findings of fact, conclusions of law, and final recommendations of the Hearing Committee to the Governing Board.

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The Governing Board will meet with the Faculty member and/or his/her representative and a representative of the administration to hear arguments regarding the Chancellor's and the Hearing Committee's recommendation regarding dismissal. This meeting will be an executive session unless the Faculty member chooses to have this meeting in public. The parties shall have no less than one-half hour to present their respective cases. The length of the meeting shall not exceed one (1) hour.

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The Governing Board, at a public meeting, shall render a final decision for retention or dismissal of the Faculty member. A copy of the final decision shall be sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in MCCCCD records. It is expressly understood that the Governing Board decision does not diminish the Faculty member's right to seek other legal remedies under local, state and federal law.

[DSOF ¶¶1-2 (DSOF Exh. 1)].

28. The Governing Board, at a public meeting, shall render a final decision for the retention or dismissal of the Faculty member. [Glasper Depo. at 7:18-8:2 and Glasper Depo. Exhibit 1 (2012-2013 RFP) at -23-, attached hereto as Exhibit 2; Castellanos Depo. at 17:11-18:22, attached hereto as Exhibit 3].

3.15. Faculty Member Dismissal-Probationary and Appointive

A Faculty member who is recommended, by the College President, through the Chancellor, to the Governing Board, for dismissal shall have access to the following due-process procedures.

3.15.1.

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in consultation with the MCCCDC Legal Office, may recommend, to the Chancellor, that there exists prima facie cause for the dismissal of a Faculty member. The Chancellor shall inform the Governing Board in writing, with a copy of the recommendation being sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in the MCCCDC records. The Vice Chancellor's recommendation will give notice to the Chancellor, Governing Board, and the Faculty member of the intention to formally recommend dismissal, which shall not be sooner than thirty (30) days from the date of the letter, nor later than the end of the current academic year.

3.15.2.

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3.15.5.

The Hearing Committee shall select a Chair. Unless the parties stipulate to extend the time beyond that which is set forth below, the Chair shall conduct a meeting with the attorney representing the MCCCCD and the Faculty member and/or his/her attorney/representative no later than twenty (20) business days after the formation of the committee for the purpose of exchanging exhibits, witness lists, and summaries of witness testimony. The Chair may choose to deny admission of an exhibit(s) or witness testimony for failure to comply with this Section.

3.15.6.

Unless the parties otherwise agree, the Hearing Committee shall conduct the hearing no later than ten (10) business days after the exchange of information detailed in Section 3.15.5. Prior to the hearing, the Faculty member must declare, in writing, whether he/she wishes the hearing to be public or in executive session. The member may attend the hearing; present any testimony, evidence, or statements, oral or written, in his/her behalf; and be represented by legal counsel or other representative. It is expressly understood that the act of testifying will not be subject to reprisal by the MCCCCD.

3.15.7.

Within five (5) business days after completion of the hearing, the Hearing Committee shall provide the Chancellor, and the Faculty member with a summary of the evidence that was presented during the hearing. In addition, the Hearing Committee shall render binding written findings of fact and

conclusions of law and forward these along with its recommendation regarding dismissal to the Chancellor. The above deadline may be extended up to fifteen (15) business days after completion of the hearing, if the Hearing Committee requests briefs and/or recommended findings of fact and conclusions of law from the parties.

3.15.8.

After receiving the Hearing Committee's summary of evidence, findings of fact, conclusions of law, and final recommendation in regard to dismissal, the Chancellor, may meet with the Hearing Committee to clarify any questions he/she may have. The Chancellor shall have ten (10) business days in which to review the recommendation regarding dismissal. The Chancellor may adopt the Hearing Committee's recommendation regarding dismissal or make his/her own recommendation and forward the recommendation along with the summary of the evidence, a copy of the findings of fact, conclusions of law, and final recommendations of the Hearing Committee to the Governing Board.

3.15.9.

The Governing Board will meet with the Faculty member and/or his/her representative and a representative of the administration to hear arguments regarding the Chancellor's and the Hearing Committee's recommendation regarding dismissal. This meeting will be an executive session unless the Faculty member chooses to have this meeting in public. The parties shall have no less than one-half hour to present their respective cases. The length of the meeting shall not exceed one (1) hour.

3.15.10.

The Governing Board, at a public meeting, shall render a final decision for retention or dismissal of the Faculty member. A copy of the final decision shall be sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in MCCCCD records. It is expressly understood that the Governing Board decision does not diminish the Faculty member's right to seek other legal remedies under local, state and federal law.

[DSOF ¶¶1-2 (DSOF Exh. 1)].

29. Martinez exercised her right to an evidentiary hearing regarding the allegations in the August 9, 2013 Statement of Charges, which was held on November 18, 2013. [Glasper Depo. at 27:1-7, 33:18-34:9, attached hereto as Exhibit 2; Martinez Depo. Vol. I at 53:4-16, attached hereto as Exhibit 1].

Defendants do not dispute PSOF ¶ 29.

30. On December 9, 2013, after considering the pleadings and evidence presented at the hearing, including expert testimony, the Hearing Committee issued its written Findings of Fact, Conclusions of Law, and Recommendation, in which it made the following binding findings:

[Phoenix College] failed to carry its burden of proof relating to violation of MCCCCD's cash handling rules found in MCCCCD Administrative Regulations 1.17, violation of Residential Policy Manual 3.2.4 (relating to financial interests in unpublished materials), violation of U.S. Copyright Law and fair use guidelines, and violation of MCCCCD Administrative Regulations 3.2.4 and 3.2.5 related to copyright regulations.

[Glasper Depo. at 35:11-24 and Glasper Depo. Exhibit 5 (Hearing Committee Findings of Fact, Conclusions of Law, and Recommendation) at -7-, attached hereto as Exhibit 2; A more legible copy of the Hearing Committee Findings of Fact, Conclusions of Law, and Recommendation is also at Bates Numbers MCCCCD/Martinez03845-03852, attached hereto as Exhibit 4].

Defendants object to PSOF ¶ 30 because it mischaracterizes and selectively cites to the MCCCCD Hearing Committee's Findings of Fact, Conclusions of Law, and Recommendation – which total eight pages in length. The Hearing Committee's conclusions of law are as follow:

CONCLUSIONS

63. PC failed to carry its burden of proof relating to violation of MCCCCD's cash handling rules found in MCCCCD Administrative Regulations 1.17, violation of Residential Policy Manual 3.2.4 (relating to financial interests in unpublished materials), violation of U.S. Copyright Law and fair use guidelines, and violation of MCCCCD

Administrative Regulations 3.2.4 and 3.2.5 related to copyright regulations.

64. Notwithstanding their education, their experience and their good faith Mr. Bellamy and Mr. Garrison disagreed as to whether or not Dr. Martinez violated copyright law. Therefore, it is inconclusive as to whether or not Dr. Martinez violated copyright law. Therefore, it is inconclusive as to whether or not Dr. Martinez intentionally and/or inadvertently violated federal copyright law.

65. It is inconclusive as to whether or not Dr. Martinez violated the “cash handling” policies of MCCCC.

66. Dr. Martinez willfully and intentionally failed to follow instructions that were communicated to her when she failed to issue refunds to students as directed by President Solley.

67. Dr. Martinez conceded that she never complied with President Solley’s clear directive to issue refunds to her students. Although Cr. Martinez now regrets her decision not to comply with President Solley’s directive, she has never claimed that she did not understand the instructions or that the instructions were beyond the scope of management’s authority. Viewed in light of these facts, Martinez’s claim that she “made a mistake” is an admission of willful insubordination.

68. By failing to comply with President Solley’s directive to issue refunds to her students, Dr. Martinez violated MCCCC Administrative Regulation 6.7.1 which prohibits the “[w]illful and intentional violation of any MCCCC administrative regulation that affects the employee’s ability to perform his or her job.”

69. By failing to comply with President Solley’s directive to issue refunds to students, Dr. Martinez violated MCCCC Administrative Regulation 6.7.3 which prohibits the “[w]illful and intentional failure to preform job duties that have first been communicated to an employee and are within the employee’s scope of employment.”

[DSOF ¶24 (DSOF Exh. 24, p. 7)].

31. The Committee further found, however, that Martinez “willfully and intentionally failed to follow instructions that were communicated to her when she failed to issue refunds to students as directed by President Solley in violation of MCCCC Administrative Regulations 6.7.1. and 6.7.3. [*Id.*].

Defendants do not dispute that the Hearing Committee found Plaintiff to have engaged in willful insubordination. However, Defendants object to PSOF ¶ 31 because it misquotes and mischaracterizes the MCCCCD Hearing Committee's conclusions of law regarding Plaintiff's willful insubordination. The Hearing Committee's conclusions of law regarding Plaintiff's willful insubordination are as follow:

66. Dr. Martinez willfully and intentionally failed to follow instructions that were communicated to her when she failed to issue refunds to students as directed by President Solley.

67. Dr. Martinez conceded that she never complied with President Solley's clear directive to issue refunds to her students. Although Cr. Martinez now regrets her decision not to comply with President Solley's directive, she has never claimed that she did not understand the instructions or that the instructions were beyond the scope of management's authority. Viewed in light of these facts, Martinez's claim that she "made a mistake" is an admission of willful insubordination.

68. By failing to comply with President Solley's directive to issue refunds to her studnets, Dr. Martinez violated MCCCCD Administrative Regulation 6.7.1 which prohibits the "[w]illful and intentional violation of any MCCCCD administrative regulation that affects the employee's ability to perform his or her job."

69. By failing to comply with President Solley's directive to issue refunds to students, Dr. Martinez violated MCCCCD Administrative Regulation 6.7.3 which prohibits the "[w]illful and intentional failure to preform job duties that have first been communicated to an employee and are within the employee's scope of employment."

[DSOF ¶24 (DSOF Exh. 24, p. 7)].

32. The Committee further recommended that the Governing Board deny the termination request and allow Martinez to continue her MCCCCD employment [Glasper Depo. at 35:11-24 and Glasper Depo. Exhibit 5 (Hearing Committee Findings of Fact, Conclusions of Law, and Recommendation) at -8-, attached hereto as Exhibit 2; A more legible copy of the Hearing Committee Findings of Fact, Conclusions of Law, and Recommendation is also at Bates Numbers MCCCCD/Martinez03845-03852, attached

hereto as Exhibit 4].

Defendants object to PSOF ¶ 32 because it selectively cites to the MCCCCD Hearing Committee's recommendations. The Hearing Committee's recommendations state as follows:

70. We hereby recommend that the Governing Board deny President Solley's termination request and allow Dr. Martinez to continue her MCCCCD employment.

71. Per MCCCCD Administrative Regulation 6.7 indicating that violation of any Employment Standards "constituted grounds for disciplinary action, *up to* [emphasis added] and including termination," we hereby recommend that the Governing Board retain Dr. Martinez."

[DSOF ¶24 (DSOF Exh. 24, p. 8)].

33. The Hearing Committee then delivered to Glasper, its summary of evidence, findings of fact, conclusions of law, and final recommendation. [Glasper Depo. at 34:23-35:10 and Glasper Depo. Exhibit 4 (December 9, 2013 Letter from Hearing Committee Counsel to Glasper), attached hereto as Exhibit 2].

Defendants do not dispute that the Hearing Committee delivered its Findings of Fact, Conclusions of Law, and Recommendation dated December 9, 2013 to Chancellor Glasper.

34. On February 10, 2014, pursuant RFP § 3.15.8., Glasper sent a letter to the President of the Governing Board indicating that he had accepted the recommendation of the Hearing Committee that Martinez not be dismissed. [Glasper Depo. at 35:25-36:14, 37:23-38:12 and Glasper Depo. Exhibit 6 (February 10, 2014 Letter from Glasper to Governing Board with attachments) at 1-2, attached hereto as Exhibit 2].

Defendants admit that on February 10, 2014, Chancellor Glasper sent a letter to the President of MCCCCD's Governing Board forwarding his recommendation regarding dismissal and informing the Governing Board:

Based on all the information referred to above and attached hereto, I accept

1 the written recommendation of the committee that Dr. Martinez NOT be
2 dismissed. After consulting with the committee, I have determined that a
3 lesser sanction authorized by the RFP and within my sole discretion as
4 Chancellor is appropriate and warranted.

5 Exhibit A.

6 Plaintiff's counsel Steven Montoya was copied on this email. Exhibit A.
7 Included with Chancellor Glasper's February 10, 2014 letter to the Governing
8 Board and Plaintiff's counsel was the February 10, 2014 Notice of Suspension
9 without Pay, Statement of Charges, and the Hearing Committee's Findings of Fact,
10 Conclusions of Law, and Recommendation, and relevant RFP sections. Exhibit A.

11 35. Glasper could have recommended to the Governing Board that they give
12 Martinez some discipline less than a termination, such as a suspension. [Glasper Depo. at
13 34:4-9, attached hereto as Exhibit 2].

14 Defendants do not dispute that the Governing Board holds ultimate
15 authority over personnel actions. But as the Chancellor of MCCCCD, Glasper "had
16 the right pursuant to the Residential Faculty Policies to unilaterally lower discipline
17 from termination to suspension." Doc. 72-2, p. 35 (Glasper deposition correction
18 page at PSOF Exh. 2). Chancellor Glasper exercised this authority when he
19 prepared the February 10, 2014 Notice of Suspension without Pay and Statement of
20 Charges, which he forwarded to the Governing Board under a February 10, 2014
21 cover letter with a copy to Plaintiff's counsel. Exhibit A. Nevertheless, if a faculty
22 member "did not agree with a suspension, then they could request that it go to the
23 Vice Chancellor and then to [the Chancellor] and then to the Governing Board.
24 But that doesn't mean that a suspended employee has the right to a hearing before
25 the Governing Board. Rather, it is up to the Governing Board whether the
26 Governing Board wants to hear more about a suspension." Doc. 72-2, p. 35
27 (Glasper deposition correction page at PSOF Exh. 2). In accordance with this
28 practice, Plaintiff was allowed to submit a nine page legal brief to the Governing
Board through her attorney arguing that her "fourteen-month suspension is the

1 economic equivalent of a dismissal.” [DSOF ¶ 29]. Plaintiff also sent at least four
 2 letters to the Governing Board asking “the board to intervene in [her] case to
 3 rescind the Chancellor’s suspension.” [DSOF ¶ 30]. On March 25, 2014, Plaintiff
 4 and her counsel each separately spoke before the Governing Board in open session
 5 and advanced the argument that her suspension was improper and that “the
 6 chancellor’s fourteen month suspension of [Plaintiff] is the functional equivalent of
 7 termination from the district.” [DSOF ¶30]. Plaintiff also appeared before the
 8 Governing Board in open session a second time on October 28, 2014 and argued
 9 against her suspension. [DSOF ¶35]. Finally, Plaintiff had two other individuals
 10 separately appear before the Governing Board on her behalf and object to her
 11 suspension. [DSOF ¶35].

12
 13 36. Dr. Glasper did not do so. [Glasper Depo. at 37:23-38:2, attached hereto as
 14 Exhibit 2].

15 Defendants do not dispute that Chancellor Glasper did not seek Governing
 16 Board approval of Plaintiff’ suspension. But as the Chancellor of MCCCCD,
 17 Glasper “had the right pursuant to the Residential Faculty Policies to unilaterally
 18 lower discipline from termination to suspension.” Doc. 72-2, p. 35 (Glasper
 19 deposition correction page at PSOF Exh. 2). Chancellor Glasper exercised this
 20 authority when he prepared the February 10, 2014 Notice of Suspension without
 21 Pay and Statement of Charges, which he forwarded to the Governing Board under
 22 a February 10, 2014 cover letter with a copy to Plaintiff’s counsel. Exhibit A.
 23 Nevertheless, if a faculty member “did not agree with a suspension, then they could
 24 request that it go to the Vice Chancellor and then to [the Chancellor] and then to
 25 the Governing Board. But that doesn’t mean that a suspended employee has the
 26 right to a hearing before the Governing Board. Rather, it is up to the Governing
 27 Board whether the Governing Board wants to hear more about a suspension.” Doc.
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 11 argued against her suspension. [DSOF ¶35]. Finally, Plaintiff had two other
 12 individuals separately appear before the Governing Board on her behalf and object
 13 to her suspension. [DSOF ¶35].

14
 15 37. Instead, the same day, Glasper sent a letter to Martinez stating that:

16 Based upon the [attached] written statement of charges, I have decided to
 17 suspend your employment under my sole authority as Chancellor pursuant
 18 to section 3.11 of the Residential Faculty Policies. The purpose of this
 19 letter [is] to notify you that your suspension from your position as
 20 Mathematics faculty at Phoenix College will begin on March 1, 2014 and
 end on May 15, 2015. Your teaching responsibilities and pay will resume
 Fall semester, 2015 unless you choose to retire (see below).

21 Having sought the advice of the General Counsel as required by Section
 22 3.11.3 of the RFP, I am satisfied that your procedural rights concerning the
 23 grounds for suspension have been met. The basis for this action is the
 24 unanimous finding of an independent hearing committee that you willfully
 violated the district policies set forth in the statement of charges and that I
 have the authority to suspend your employment without pay.

25 Also under the terms of subsection 3.11.3, the interim Vice Chancellor for
 26 Human Resources will offer to consult with you...concerning the rationale
 27 for this decision. If you accept his invitation, he will deliver this notice and
 28 attachment after the meeting. If you decline your opportunity to consult
 with him, he will have the decision delivered to you in accordance with the

1 policy.

2 You may voluntarily retire from your position in lieu of this suspension
3 without pay....

4 [Glasper Depo. at 35:25-36:14, 38:3-12 and Glasper Depo. Exhibit 6 (February 10, 2014
5 Letter from Glasper to Governing Board with attachments) at page 3, attached hereto as
6 Exhibit 2; Castellanos Depo. at 26:12-24 and Castellanos Depo. Exhibit 6 (February 10,
7 2014 Notice of Suspension without Pay and Statement of Charges) at page 1 of 11,
8 attached hereto as Exhibit 3].

9 **Defendants object to PSOF ¶ 37 because it mis-cites Glasper's letter to**
10 **Plaintiff by adding emphasis without noting the emphasis was not contained in the**
11 **original. PSOF ¶ 37 is further objectionable because the cited language is not the**
12 **entire letter. Notwithstanding the foregoing, Defendants do not dispute that**
13 **Plaintiff and her counsel were provided with Plaintiff's notice of suspension on**
14 **February 10, 2014 that outlined the dates of her suspension from March 1, 2014**
15 **through May 15, 2015. Exhibit A. Plaintiff's suspension dates were later modified**
16 **to April 15, 2014 through May 15, 2015. [DSOF ¶27]**

17 38. RFP § 3.11. was renumbered under the 2013-2014 RFP. Under the
18 previous RFP, for 2012-2013, it was numbered as § 3.13. [Glasper Depo. at 36:16-37:1,
19 attached hereto as Exhibit 2].

20 **Defendants do not dispute RFP ¶ 38.**

21
22 39. The suspension was later pushed back to April 14, 2014 due to scheduling
23 conflicts for a meeting between Glasper, the Vice-chancellor of HR and Martinez.
24 [Deposition of Dr. Cleopatria Martinez on October 11, 2016 ("Martinez Depo. Vol. II")
25 at 287:11-288:14, attached hereto as Exhibit 5].

26 **Defendants dispute PSOF ¶ 39. The Statement of Charges was originally**
27 **dated February 10, 2014, with an effective suspension date of March 1, 2014. [DSOF**
28

¶27]. MCCCCD originally scheduled a meeting between Plaintiff and Vice Chancellor of Human Resources Bowers to discuss the Statement of Charges on February 25, 2014 – four days before the effective date of the suspension. [DSOF ¶27]. The day before the meeting was scheduled to take place, Plaintiff unilaterally canceled the meeting citing a “sudden medical issue.” [DSOF ¶27] She informed MCCCCD that the earliest she could meet consistent with her attorney’s schedule was Friday, March 7, 2014. [DSOF ¶27] MCCCCD accommodated Plaintiff’s request to move her meeting to March 7, 2014, and postponed Plaintiff’s suspension by one month to ensure that she received a meeting with the Vice Chancellor prior to the suspension taking effect. [DSOF ¶27] Plaintiff was issued a an Update to Notice of Suspension Without Pay dated April 14, 2014 which stated that her revised dates of suspension were April 15, 2014 through May 15, 2015. [DSOF ¶27]

40. This was the first time in Glasper’s nearly thirteen years as Chancellor that Glasper suspended a faculty member under 2013-2014 RFP § 3.11. or an equivalent section from previous RFPs. [Glasper Depo. at 43:19-21, Glasper Depo. Errata Sheet at 43:21, attached hereto as Exhibit 2].

Defendants object to PSOF ¶ 40 because the allegations are irrelevant and inadmissible because they do not “make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” FRE 401, 402; Fed. R. Civ. P. 56(c)(2). Notwithstanding the foregoing, Dr. Glasper only recalls suspending two faculty members under 2013-2014 RFP § 3.11. or an equivalent section from previous RFPs. Those two individuals were Plaintiff in April of 2014 and one other faculty member in February of 2016. Doc. 72-2, p. 35 (Glasper deposition correction page at PSOF Exh. 2); DSOF ¶26-28; DSOF Exh. 36.

41. The only other *unpaid* suspension Glasper issued under this policy,

1 pursuant to with faculty members are “normally paid”, occurred in February, 2016, the
2 last month of Glasper’s employment with MCCCCD, and after this lawsuit was filed.
3 [Glasper Depo. at 43:19-21, Glasper Depo. Errata Sheet at 43:21; Castellanos Depo. at
4 63:3-14 and Castellanos Depo. Exhibit 12 (Personnel Action Request) at page 1-2,
5 attached hereto as Exhibit 3].

6 **Defendants object to PSOF ¶ 41 because the allegations are irrelevant and**
7 **inadmissible because they do not “make the existence of any fact that is of**
8 **consequence to the determination of the action more probable or less probable than**
9 **it would be without the evidence.” FRE 401, 402; Fed. R. Civ. P. 56(c)(2).**
10 **Notwithstanding the foregoing, Defendants Dr. Glasper only recalls suspending two**
11 **faculty members under 2013-2014 RFP § 3.11 or an equivalent section from**
12 **previous RFPs. Those two individuals were Plaintiff in April of 2014 and one other**
13 **faculty member in February of 2016. Doc. 72-2, p. 35 (Glasper deposition**
14 **correction page at PSOF Exh. 2); DSOF ¶26-28; DSOF Exh. 36.**

15
16 42. It was a three-day suspension that involved no loss of benefits. [*Id.*].

17 **Defendants object to PSOF ¶ 42 because the allegations are irrelevant and**
18 **inadmissible because they do not “make the existence of any fact that is of**
19 **consequence to the determination of the action more probable or less probable than**
20 **it would be without the evidence.” FRE 401, 402; Fed. R. Civ. P. 56(c)(2).**
21 **Notwithstanding the foregoing, the faculty member suspension that occurred in**
22 **February 2016 was without pay, but did not result in a loss of benefits.**

23
24 43. Along with the Notice of Suspension without Pay, Glasper provided
25 Martinez with a Statement of Charges, also signed by Glasper, in which the allegations
26 in the August 9, 2013 Statement of Charges are essentially repeated, but in which it is
27 also written, in pertinent part, as follows:
28

Based upon the findings of the hearing committee which are attached to this statement, and the record of their proceeding, I have determined as follows:

An additional concern arose after a student brought the copying to PC's attention, complaining you did not provide receipts for the material charges. MCCCCD Administrative Regulation 1.12 states as follows:

1.12.2 Authorization

Prior to participating in the sale of products or services, Revenue and Expenditure categories must be included in a program's budget, and approved by the Governing Board during the annual budget adoption process, or as legally changed the first year

1.12.3. Fees

Fees exchanged for products or services produced through an educational, training or service activity shall be pre-approved by the Governing Board.'

Phoenix College determined that your course materials charge was not included in the adopted budget or pre-approved by the Governing Board.

[Glasper Depo. at 35:25-38:12 and Glasper Depo. Exhibit 6 (February 10, 2014 Letter from Glasper to Governing Board with attachments) at pages 4-5, attached hereto as Exhibit 2; Castellanos Depo. at 26:12-24 and Castellanos Depo. Exhibit 6 (February 10, 2014 Notice of Suspension without Pay and Statement of Charges) at Page 2-3 of 11, attached hereto as Exhibit 3].

Defendants do not dispute that sections 1.12.2 and 1.12.3 of MCCCCD'S administrative regulations are referenced in the February 10, 2014 written notice of suspension which was sent to Plaintiff's counsel on that same date. The February 10, 2014 written notice of suspension shows that Plaintiff's prior counsel, Stephen Montoya, is a copied recipient of the notice of suspension. Exhibit A. Regulation 1.12.2 and 1.12.3 *inter alia* prohibit the unauthorized sale of course materials to students which is the exact issue on which the hearing committee ruled the Plaintiff was willfully insubordinate. Exhibit A; DSOF Exhs. 24 & 36. After receiving the

1 notice of suspension, which includes references to sections 1.12.2 and 1.12.3 of the
 2 administrative regulations on February 10, 2014, Plaintiff received a subsequent
 3 due process meeting with MCCCCD's Vice Chancellor of Human Resources, Jim
 4 Bowers, on March 7, 2014. Exhibit A; DSOF ¶28. At the March 7, 2014 meeting,
 5 Plaintiff was represented by her counsel, Stephen Montoya, who had been in
 6 receipt of the notice of suspension for nearly a month. Exhibit A; DSOF ¶28.
 7 Plaintiff, through her counsel had not only been on notice of section 1.12.2 and
 8 1.12.3 of the administrative regulations for nearly a month but had a full and
 9 complete opportunity to make any arguments that she desired at her due process
 10 meeting before Chancellor Bowers on March 7, 2014. Exhibit A; DSOF ¶28.

11
 12 44. Neither this allegation nor the cited regulations were mentioned in the
 13 original Statement of Charges dated August 9, 2013. [Glasper Depo. at 10:10-11:9,
 14 35:25-38:12, 47:23-48:23, Glasper's Errata Sheet at 43:21, and Compare Glasper Depo.
 15 Exhibit 3 (August 9, 2013 Notice of Dismissal and Statement of Charges) with Glasper
 16 Depo. Exhibit 6 (February 10, 2014 Letter from Glasper to Governing Board with
 17 attachments) at page 4-5, attached hereto as Exhibit 2; Castellanos Depo. at 41:7-10
 18 attached hereto as Exhibit 3].

19 Defendants do not dispute that sections 1.12.2 and 1.12.3 of MCCCCD'S
 20 administrative regulations are referenced in the February 10, 2014 written notice of
 21 suspension which was sent to Plaintiff's counsel on that same date. The February
 22 10, 2014 written notice of suspension shows that Plaintiff's prior counsel, Stephen
 23 Montoya, is a copied recipient of the notice of suspension. Exhibit A. Regulation
 24 1.12.2 and 1.12.3 *inter alia* prohibit the unauthorized sale of course materials to
 25 students which is the exact issue on which the hearing committee ruled the Plaintiff
 26 was willfully insubordinate. Exhibit A; DSOF Exhs. 24 & 36. After receiving the
 27 notice of suspension, which includes references to sections 1.12.2 and 1.12.3 of the
 28 administrative regulations on February 10, 2014, Plaintiff received a subsequent

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 7 complete opportunity to make any arguments that she desired at her due process
 8 meeting before Chancellor Bowers on March 7, 2014. Exhibit A; DSOF ¶28.

9
 10 45. Instead, they appeared for the first time in the February 10, 2014 Statement
 11 of Charges. [Plaintiff's Verified Amended Complaint, ¶39; Defendants' Answer to
 12 Plaintiff's Verified Amended Complaint at ¶39].

13 Defendants object to the allegations contained in PSOF ¶ 44 because the
 14 Defendants do not dispute that sections 1.12.2 and 1.12.3 of MCCCCD'S
 15 administrative regulations are referenced in the February 10, 2014 written notice of
 16 suspension which was sent to Plaintiff's counsel on that same date. The February
 17 10, 2014 written notice of suspension shows that Plaintiff's prior counsel, Stephen
 18 Montoya, is a copied recipient of the notice of suspension. Exhibit A. Regulation
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 26 Plaintiff was represented by her counsel, Stephen Montoya, who had been in
 27 receipt of the notice of suspension for nearly a month. Exhibit A; DSOF ¶28.
 28 Plaintiff, through her counsel had not only been on notice of section 1.12.2 and

1 **1.12.3 of the administrative regulations for nearly a month but had a full and**
 2 **complete opportunity to make any arguments that she desired at her due process**
 3 **meeting before Chancellor Bowers on March 7, 2014. Exhibit A; DSOF ¶28.**
 4

5 46. As a result of her suspension, Martinez did not receive any salary or
 6 benefits for sixteen months from April 15, 2014, to the beginning of the Fall semester in
 7 August 2015. [Martinez Depo. Vol. II at 289:16-290:4, attached hereto as Exhibit 5].

8 **Defendants dispute PSOF ¶ 46. Plaintiff was suspended without pay from**
 9 **April 15, 2014 through May 15, 2015 - a period of 13 months. [DSOF ¶¶26-27]**
 10 **Defendants do not dispute that Plaintiff did not receive benefits during this time**
 11 **period.**
 12

13 47. The benefits lost to Martinez during that period included, among other
 14 things, medical insurance, dental insurance, paid sick leave, personal leave, basic life
 15 insurance, accidental death & personal loss insurance, mid-term disability insurance and
 16 access to the employee assistance program. [Martinez Depo. Vol. II at 289:16-290:4,
 17 attached hereto as Exhibit 5].

18 **Defendants do not dispute PSOF ¶47.**
 19

20 48. She also suffered emotional distress related to the lack of due process and
 21 long-term suspension. [Martinez Depo. Vol. II at 164:8-19, attached hereto as Exhibit 5].

22 **Defendants dispute PSOF ¶ 48. Plaintiff has waived her claims that she was**
 23 **purportedly depressed, suicidal or required medical treatment or medication for**
 24 **her alleged emotional distress that she attributes to MCCCC. Exhibit B (WILSON**
 25 **00001-00006). Moreover, as MCCCC's expert witness Brady Wilson, M.D. opined,**
 26 **Plaintiff's emotional distress claim is "not credible" based on her medical record.**
 27 **As Dr. Wilson summarized in his expert report:**
 28

Cleopatria Martinez does not present in her medical record as a reliable and accurate historian. She frequently contradicts herself in different venues of examination. She appears to “feign ineptitude” when required to answer a question where there is a possibility that an answer might negatively reflect upon her lawsuit. All data supports a pervasive pattern where Cleopatria Martinez is “mismanaging information” in such a way as to support her narrative of being harmed while in the employment of the District. There is significant evidence of malingering; a pattern of exaggeration and the mismanagement of information in attempts to present herself as considerably more distributed than in this case. This pattern of dissimulation, contradiction, disinclination to candor, lack of reliability and misrepresentation support my opinion that, based upon forensic record review, Cleopatria Martinez is mismanaging information that relates to her lawsuit.

Exhibit B (WILSON 00006). Dr. Wilson further elaborated that Plaintiff’s “claims that any emotional distress she suffered is solely attributable to the District ... is not credible” and noted her “well documented history of depression and anxiety” based on the “multiple competitive causal stresses in her life” including “a history of divorce, problems with her children, previous episodes of depression unknown characterological issues, and a complex medical history of an unknown origin.” Exhibit B (WILSON 00004). Dr. Wilson also noted that “Cleopatria Martinez is extreme in her fabrication or attribution of symptoms to the point that the presentation is fantastic or preposterous.” Exhibit B (WILSON 00004).

49. Glasper’s dismissal recommendation had been followed by a vigorous prosecution of the case Martinez before the Hearing Committee by MCCCCD employees and counsel who fought to support Glasper’s dismissal recommendation. [November 18, 2013 Hearing Transcript at 12:3-25:9, 158:5-163:15, attached hereto as Exhibit 6].

Defendants do not dispute that MCCCCD initiated termination proceedings against Martinez and that she received a full day administrative hearing before a Hearing Committee comprised of her peers. Defendant objects to the remainder of the allegations in PSOF ¶49 because they are argumentative, irrelevant and inadmissible because they do not “make the existence of any fact that is of

1 consequence to the determination of the action more probable or less probable than
2 it would be without the evidence.” FRE 401, 402; Fed. R. Civ. P. 56(c)(2).
3

4
5 RESPECTFULLY SUBMITTED this 17th day of April 2017.

6 FISHER & PHILLIPS LLP

7 By s/ Shayna H. Balch

8 Pavneet Singh Uppal

9 Shayna H. Balch

10 3200 N. Central Avenue, Suite 805

11 Phoenix, Arizona 85012-2425

12 Attorneys for Defendants
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FISHER & PHILLIPS LLP
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2425
(602) 281-3400

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April 2017 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

Edmundo P. Robaina
Thomas T. Griffin
Ashley A. Marton
ROBAINA & KRESIN PLLC
5343 North 16th Street, Suite 200
Phoenix, Arizona 85016
Attorneys for Plaintiff

s/ Michelle C. Colwell

FISHER & PHILLIPS LLP
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2425
(602) 281-3400